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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/749,148	12/30/2003	Oomman Painummoottil Thomas	18,708	3857

7590 04/13/2006

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EXAMINER
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ASINOVSKY, OLGA

ART UNIT	PAPER NUMBER
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1711

DATE MAILED: 04/13/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/749,148	THOMAS ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Olga Asinovsky	1711	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 03 January 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1 and 4-35 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 and 4-35 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 December 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Response to Arguments***

1. Applicant's arguments filed on January 3, 2006 with respect to claims 1 and 4-35 have been considered but are moot in view of the new ground(s) of rejection.

The applicants' argument is that the present claims disclose an elastomeric composition comprising a high performance elastomer and a low performance elastomer and a graft copolymer of the high and low performance elastomers.

The new search has been made.

### ***Claim Rejections - 35 USC § 102/103***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1 and 4-35 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Walton et al U.S. Patent 6,479,154.

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Walton discloses coextruded elastomeric films comprising "high performance elastomer", a "low performance elastomer" and a compatibilizer acting as adhesion promoter for film coextrusion of dissimilar or incompatible materials for producing a multilayer film. A high performance elastomer having a level of hysteresis of less than about 75% (col. 8, lines 11-15) is readable in the present claims 1, 4-5, 13-15, 25 and 31. A low performance elastomer having a level of hysteresis of greater than about 75% (col. 8, line 26-29) is readable in the present claims 1, 4-5, 13-15, 21-22, 25 and 31. The low performance elastomer is a core layer formed from polyethylene in the presence of a single site/metallocene catalyst, col. 9, lines 24-34, col. 10, lines 53-57. The low performance elastomer of the core layer is present in the amount of between about 35 and 50 wt%, for the present claims. The low performance elastomer can have a density below 0.89 g/cm<sup>3</sup>, col. 2, lines 33-35, for the present claims 9-10. The definition of high and low performance elastomes is readable in the present claims. The amount of the high and low performance elastomes is within the range specified in the present claims. The high performance elastomer is a skin layer comprising a blend of a high performance elastomer with ethylene methyl acrylate (EMA) copolymer, col. 4, lines 42-45 and col. 11, lines 39-42. The high performance elastomer can be formed from a styrenic block copolymer elastomeric resin having high elastic performance, col. 4, lines 48-49 and col. 10, line 63. A compatibilizer such as ethylene methyl acrylate copolymer is readable for being a graft copolymer in the present claims 1, 13, 25 and 31. Filler can be present, col. 8, line 42. The multilayered film can be used in a wide variety of applications for the present claims 12, 26-30, 32-35. Walton discloses that a

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multilayer laminate can include polymers in a variety of configurations and modifications, col. 6, lines 32-39. The terms: block copolymer, graft copolymer and blends are readable in the present claims. The difference between the present claims 1, 13, 25 and 31 is the requirement in the present claims that a graft copolymer or a copolymer is present in the amount of about 0.1 to 10 % by weight. Walton discloses that the EMA is present in an amount between about 15 to 50% based on weight in the skin layer, col. 11, line 61-62. It is reasonably to presume that the amount of the compatibilized can be reduced and/or selected in the optimized range for providing an adhesion effect of the skin layer to the core layer. It is a burden on the applicants to provide the difference in order to overcome this rejection under *In re Fitzgerald* 205 USPQ 594.

This action is not final in light of the new ground of the rejection.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Olga Asinovsky whose telephone number is 571-272-1066. The examiner can normally be reached on 9:00 to 5:30 pm.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Seidleck can be reached on 571-272-1078. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Olga Asinovsky  
Examiner  
Art Unit 1711

  
April 07, 2006

  
James J. Seidleck  
Supervisory Patent Examiner  
Technology Center 1700